

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 09-20449

v.

HONORABLE AVERN COHN

D-2 HERBERT WORTHY,

Defendant.

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GOVERNMENT'S SENTENCING MEMORANDUM

The United States of America, by its undersigned counsel, submits the following sentencing memorandum regarding defendant Herbert Worthy (Docket No. 66).

Having been convicted of taking tens of thousands of dollars in bribes while he was the Mayor of the City of Ecorse, Herbert Worthy asks that this court depart downward and impose a non-custodial sentence of home detention on the grounds of his age and his physical health. Defendant's request should be denied. The defendant claims infirmities of age (79 years), weight (80 pounds overweight), deafness in one ear, high blood pressure, and high cholesterol. There is nothing extreme or extraordinary about these conditions. Defendant fails to meet his burden of showing that the Bureau of Prisons lacks the facilities to adequately accommodate either his medical

condition or his age. As such, no downward departure is appropriate. To the degree that either Mr. Worthy's age or his physical health merit consideration at the time of sentencing, the court can make an appropriate adjustment within the agreed upon sentencing range of 46 to 57 months.

For the reasons set forth below, the government requests that the court impose a sentence of 48 months of incarceration in this matter. The government further requests that the court impose an order of restitution payable to the City of Ecorse in an amount of not less than \$10,000.00 and a criminal fine of \$10,000.00 as part of defendant's sentence.

I. Factual Statement

On January 27, 2010 Herbert Worthy, the Mayor of the City of Ecorse, was convicted by plea for the offense of conspiracy to commit bribery. Mr. Worthy's conviction arose from his misuse of office to obtain tens of thousands of dollars in illegal bribe payments in connection with contracts to provide public works services to the City of Ecorse. Herbert Worthy began accepting the subject payments in November of 2007, within weeks of taking office as Mayor, and continued doing so for approximately one year. (Docket No. 35: Rule 11 Plea Agreement, pgs. 3-4; Presentence Investigation Report, ¶¶ 9-13).

Mr. Worthy's Rule 11 Agreement provides for a sentencing guideline range of 46 to 57 months and a maximum term of imprisonment of not more

than 57 months on his bribery conviction. (Rule 11 Agreement, pgs. 5 and 7). The Agreement further provides for a term of supervised release of up to three years and a fine of between \$10,000.00 and \$100,000.00. (Id., pg. 7). In addition, the Agreement provides that the court may impose restitution and expressly states “there is no agreement on the amount of restitution that may be imposed in this matter.” (Id., pg. 8).

The Presentence Investigation Report prepared by the United States Probation Office also found that the sentencing guideline range of 46 to 57 applies to defendant’s bribery conviction. (PSIR, ¶ 56). The PSIR states that a period of supervised release of not more than three years and a fine of between \$10,000 and \$100,000.00 are applicable under the sentencing guidelines. (Id., ¶¶ 57-58 and 63). Having conducted its own investigation, the Probation Office has now recommended that restitution in the amount of \$10,000.00, payable to the City of Ecorse, be imposed as part of Mr. Worthy’s sentence. (PSIR, ¶ 14). Defendant Herbert Worthy has not objected to any of the findings in the PSIR.

II. Argument

As the court is aware, it must impose a sentence based on the factors set forth in Title 18, United States Code, Section 3553(a). The government submits that the following statutory factors are most relevant to this case.

A. The Nature and Circumstances of the Offense

Herbert Worthy's conviction for accepting tens of thousands of dollars in bribes provides a stunning example of the 'pay to play' approach to local government which has become all too familiar to the residents of this district. Even viewed against the recent plague of municipal corruption, several aspects of defendant Worthy's crime stand out as particularly egregious.

First there is the fact that Mr. Worthy was the Mayor and, as such, he stood as the most senior public official in the City of Ecorse with the ultimate responsibility for the conduct of his administration. Second, Mr. Worthy began to accept illegal cash payments within weeks, if not days, of taking public office. Third, the payments that were siphoned off into Mr. Worthy's pockets came from funds meant to pay for basic public services for the citizens of Ecorse, such as garbage collection, snow plowing and water service.

All of this occurred during the same time period that saw the City of Ecorse, under Mr. Worthy's tenure as Mayor, slide into fiscal mismanagement so severe that the Governor of Michigan found it necessary to declare a financial emergency and to install an emergency financial manager for the city. It is difficult to imagine a starker example of betrayal by a public official who put personal enrichment ahead of the interests of the people he or she was elected to serve.

B. History and Characteristics of the Defendant

Herbert Worthy has no prior criminal convictions and should be scored as a Criminal History Category I under the U.S. Sentencing Guidelines.

In the instant matter, it appears that, following his plea, Mr. Worthy cooperated with the U.S. Probation Department. In addition, Mr. Worthy accepted responsibility for his misconduct and voluntarily resigned from office immediately after his conviction, thereby sparing the City of Ecorse and its citizens of the expense and uncertainty of a protracted legal battle.

C. Seriousness of the Offense, Promoting Respect For the Law, Providing Just Punishment, and Affording Adequate Deterrence

Herbert Worthy's crime was serious. The ugly spectacle of an elected leader conducting back room deals and taking tens of thousands of dollars in cash bribes does untold damage on the faith of our citizens in the integrity and the fairness of their system of government. The sentence imposed in this case must send a clear message that such conduct will not be tolerated.

It has been said that "the accomplice to the crime of corruption is frequently our own indifference." The record before this court reveals a troubling and unacceptable pattern of a public official misusing his position for personal enrichment with little if any regard for the common good of the citizens he was elected to serve. In our nation of laws the only recourse for

such a betrayal of public trust comes through the justice system now delegated to this court. In light of those factors, a substantial sentence of between 46 and 57 months is warranted.

D. Sentences Contemplated by the Sentencing Guidelines

The PSIR prepared by the U.S. Probation Department found that an advisory guideline range of 46 to 57 months applies to defendant's offense of conviction. (PSIR, ¶ 60). Mr. Worthy has not contested that calculation. While a sentence within the advisory guideline range is not "per se reasonable," it does carry a presumption on appeal of reasonableness when the record shows that the district court considered the range as applied to a particular defendant in light of the § 3553(a) factors. *United States v. Buchanan*, 449 F.3d 731, 734 (6th Cir. 2006).

E. Defendant Worthy's Request for Downward Departure Should Be Denied

Herbert Worthy has filed a motion asking that this court depart downward from the applicable sentencing guidelines under USSG § 5H1.1, on the basis of his age, and under § 5H1.4, on the basis of his physical condition. His motion omits the first sentence of each of these guidelines, which state that age or physical condition is not ordinarily relevant in determining whether a departure is warranted.

While Mr. Worthy's health issues are regrettable, they do not appear to

be unprecedented or even uncommon as measured against other criminal defendants sentenced in this district. Mr. Worthy provides nothing to this court, in terms of official medical diagnosis or treatment plans, to indicate that the Bureau of Prisons lacks either the facilities or the services to accommodate his health issues. *See United States v. Carpenter*, 359 Fed.Appx. 553, 558 (6th Cir. 2009) (affirming 108 month sentence and denial of defendant's motion for downward departure where the district court "acknowledged [his] poor health and concluded that the BOP's facilities are equipped to treat him"); *United States v. Clark*, 469 F.3d 568, 571 (6th Cir. 2006) (affirming 360 month sentence where the district court "took into account" defendant's "age and medical condition"). To the degree that either Mr. Worthy's age or his medical condition are appropriate factors to consider in mitigation of punishment, those issues can be adequately accounted for by this court in selecting a sentence within the guideline range of 46 to 57 months.

In support of his request for a sentence of home confinement, Mr. Worthy cites the monthly expense of incarceration and argues that a non-custodial sentence would be "less costly than incarceration." (Docket No. 66: Defendant's Sentencing Memorandum, pg. 2). There is an inescapable irony in the notion of this defendant arguing for the safeguarding public funds. The

time for honoring that principal is long passed. Efficiency and cost saving are simply no substitute for the due administration of justice in this case.

III. Conclusion

Based upon the foregoing and consistent with Herbert Worthy's conduct, his plea agreement and the statutory sentencing factors, the government recommends that the court impose a sentence of 48 months of incarceration to be followed by a term of three years of supervised release. The government further requests that the court impose an order of restitution to the City of Ecorse in an amount of not less than \$10,000.00 and a criminal fine of \$10,000.00 as part of that sentence.

Respectfully submitted,

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Dated: January 21, 2011

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2011, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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